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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DIRECTV, INC., a California corporation,  
Plaintiff,  
v.  
EQ STUFF, INC.; et al.,  
Defendants.

) Case No. CV 02-00292 DDP (VBKx)  
)  
) **ORDER DENYING DEFENDANTS' MOTION TO DISMISS**  
)  
) [Motion filed on 03/08/02]  
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This matter comes before the Court on the defendants' motion to dismiss. After reviewing and considering the materials submitted by the parties, the Court denies the motion.

**BACKGROUND**

On January 11, 2002, the plaintiff, DIRECTV, Inc., ("DIRECTV" or the "plaintiff") filed the instant action against EQ Stuff, Inc. ("EQ Stuff"), Michael and Betina Worley (the "Worleys"), Anna Bouzas, Taylor Patterson ("Taylor Patterson"), GBR Enterprises, Inc. ("GBR"), and OnTech, Inc. ("OnTech"). The plaintiff alleges against all the defendants violations of The Digital Millennium

1 Copyright Act, 17 U.S.C. §§ 1203 (the "DMCA"); The Communications  
2 Act, 47 U.S.C. § 605(e)(3)(a) (the "Communications Act"); and The  
3 Wiretap Act, 18 U.S.C. § 2520(a) (the "Wiretap Act"). On the same  
4 day, the plaintiff filed an *ex parte* application for a temporary  
5 restraining order (TRO), based on violations of the DCMA and the  
6 Communications Act. On January 16, 2002 the Court granted the TRO.  
7 On March 12, 2002, the Court granted the preliminary injunction.

8 Before the Court is a motion to dismiss and/or to transfer  
9 venue filed by EQ Stuff and the Worleys. The Worleys base their  
10 motion to dismiss on lack of personal jurisdiction.<sup>1</sup> The Worleys  
11 and EQ Stuff move to dismiss Count IV of the plaintiff's First  
12 Amended Complaint ("FAC") for failure to state a claim. The  
13 defendants OnTech, GBR, and Taylor Patterson join in the portion of  
14 the motion to dismiss Count IV of the FAC. In the alternative, EQ  
15 Stuff and the Worleys seek to have the case transferred to  
16 Florida.<sup>2</sup>

## 18 DISCUSSION

### 19 I. Motion to Dismiss for Lack of Personal Jurisdiction

#### 20 A. Legal Standard

21 The plaintiff bears the burden of establishing personal  
22 jurisdiction. Ziegler v. Indian River County, 64 F.3d 470, 473  
23 (9th Cir. 1995). If the court, however, has not heard testimony or  
24 made factual determinations, the plaintiff must only make a prima

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26 <sup>1</sup> The parties do not dispute that this Court has jurisdiction  
27 over EQ Stuff.

28 <sup>2</sup>The defendant Anna Bouzas has not joined in the instant  
motion.

1 facie showing of personal jurisdiction. Id. The plaintiff may use  
2 affidavits of knowledgeable witnesses in meeting its burden of  
3 proving jurisdiction. Data Disc, Inc. v. Systems Tech. Assoc.,  
4 Inc., 557 F.2d 1280, 1285 (9th Cir. 1977). In determining whether  
5 the plaintiff has met this burden, the Court must take the  
6 allegations in the plaintiff's complaint as true and resolve  
7 disputed jurisdictional facts in the plaintiff's favor. American  
8 Tel. & Tel. Co. v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588-89  
9 (9th Cir. 1996).

10 The Court's exercise of personal jurisdiction over a  
11 non-resident defendant must be consistent with the Constitution.  
12 Kransco Mfg., Inc. v. Markwitz, 656 F.2d 1376, 1377 (9th Cir.  
13 1981). Courts have adopted a two-tiered approach to analyze  
14 whether a non-resident defendant's contacts with the forum state  
15 are sufficiently substantial so as to comport both with the  
16 Constitution and with traditional notions of fair play and  
17 substantial justice. International Shoe Co. v. Washington, 326  
18 U.S. 310, 316 (1945). This two-tiered approach involves a  
19 determination of whether a court has general or specific  
20 jurisdiction over a defendant.

21

22 B. Analysis

23 1. Specific Personal Jurisdiction

24 Specific personal jurisdiction may be exercised when the  
25 "nature and quality" of the defendant's contacts with the forum  
26 state are significant in relation to the specific cause of action.  
27 Data Disc, 557 F.2d at 1287. In order for the forum state to  
28 properly assert jurisdiction over an out of state defendant, the

1 defendant must have purposefully directed its activities towards  
2 residents of the forum state. Burger King Corp. v. Rudzewicz, 471  
3 U.S. 462, 472 (1985)). Further, the forum-related activities must  
4 be related to the claim, and the exercise of jurisdiction must be  
5 reasonable. Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir. 1995).

6

7 a. Purposefully Directed Activities

8 Although EQ Stuff is subject to jurisdiction in California,  
9 the Worleys argue, as individuals, they are not subject to such  
10 jurisdiction. The plaintiff, however, contends that the Worleys  
11 personally engaged in and directed intentional contacts with  
12 customers and business partners in California, activity which the  
13 plaintiff argues gives rise to personal jurisdiction. (Pl's Opp.  
14 at 1.)

15 Regarding the Worley's personal involvement with California  
16 customers, the plaintiff submits the following evidence: (1) Mrs.  
17 Worley was individually in charge of shipping products; and (2)  
18 over 2,500 products were sold and shipped to California residents.  
19 (Id. at 5.)

20 Regarding the Worley's personal involvement with business  
21 partners in California, the plaintiff submits the following  
22 evidence: (1) Mr. Worley individually commissioned the production  
23 of devices from California suppliers, including co-defendant  
24 OnTech, and High Speed Designs, Inc.; (2) a preliminary accounting  
25 shows that the defendants spent over \$1 million on costs of goods  
26 sold; (3) the defendants contracted with several California  
27 companies that provided ongoing services necessary for the  
28 operation of their website - - namely Card Services International

1 and PayPal; and (4) the defendants had a business services contract  
2 with California co-defendant GBR, where the personal contact was  
3 Taylor Patterson, a relative of Mr. Worley. (Pl's Opp. at 6-7.)

4 Moreover, the plaintiffs contend that in each of these  
5 business relationships with California entities, Mr. and/or Mrs.  
6 Worley were the "guiding force" and the personal contacts with the  
7 entities. (Id. at 7.) For example, the Pay Pal accounts to which  
8 payment for EQ Stuff products were sent were registered in both  
9 Michael and Betina Worley's names, and payments sent to these  
10 accounts were deposited directly into the Worley's personal bank  
11 account.

12 Based upon the evidence submitted, the Court finds that the  
13 Worleys have purposefully directed activities at California by  
14 filling orders that the Worleys knew were bound for California, and  
15 by conducting business relationships with several California  
16 companies that provided ongoing services necessary for the  
17 operation of the EQ Stuff website. As such, the Court finds that  
18 the defendants have purposefully directed activities at the forum  
19 state of California.

20

21 b. Forum-Related Activities

22 The second requirement for specific jurisdiction is that the  
23 contacts constituting purposeful availment must be the ones that  
24 gave rise to the current suit.<sup>3</sup> Bancroft & Masters, Inc. v.  
25 Augusta Nat'l Inc., 223 F.3d 1082, 1088 (9th Cir. 2000). This  
26 element is established if the plaintiff would not have been injured

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28 <sup>3</sup>The Worleys do not address this prong because they contend  
that the plaintiff cannot satisfy the purposeful availment test.

1 "but for" the defendant's activities. Panavision Int'l, L.P. v.  
2 Toeppen, 141 F.3d 1316, 1322 (9th Cir. 1998); Ballard, 65 F.3d at  
3 1500.

4 Here, the plaintiff's case is premised on the sale, via the  
5 Internet, of allegedly illegal goods into California that allow  
6 people to pirate DIRECTV's signals. (Pl's Opp. at 7.) Moreover,  
7 the plaintiff would not have suffered injury in the forum but for  
8 the Worley's conduct. Clearly, the Worley's contacts are closely  
9 related to the plaintiff's causes of action.

10

11 c. Reasonableness

12 The final requirement for specific jurisdiction is  
13 reasonableness.<sup>4</sup> An otherwise valid exercise of personal  
14 jurisdiction is presumed to be reasonable. Ballard, 65 F.3d at  
15 1500. Thus, once a court finds purposeful availment, it is the  
16 defendant's burden to "present a compelling case" that the exercise  
17 of jurisdiction would be unreasonable. Id. (citing Burger King  
18 Corp., 471 U.S. at 477). This determination requires the balancing  
19 of seven factors: (1) the extent of purposeful interjection; (2)  
20 the burden on the defendant of defending in the forum; (3) the  
21 extent of conflict with the sovereignty of the defendant's state;  
22 (4) the forum state's interest in the dispute; (5) the most  
23 efficient forum for judicial resolution of the dispute; (6) the  
24 importance of the forum to the plaintiff's interest in convenient  
25 and effective relief; and (7) the existence of an alternative

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27 <sup>4</sup> The Worleys do not address the reasonableness prong because  
28 they contend that the plaintiff cannot satisfy the purposeful  
availment test. (Defs' Mtn. at 7.)

1 forum. Gray & Co., 913 F.2d at 761. The Court address the factors  
2 most significant to the decision in the instant case.

3 *i. Purposeful interjection*

4 "Even if there is sufficient interjection into the state to  
5 satisfy the purposeful availment prong, the degree of interjection  
6 is a factor to be weighed in assessing the overall reasonableness  
7 of jurisdiction under the reasonableness prong." Core-Vent, 11  
8 F.3d at 1488 (internal citation omitted). Here, the Worleys sold  
9 and shipped goods into California over 2500 times and established  
10 significant business relations with multiple California entities.  
11 Accordingly, the Court finds that the purposeful interjection  
12 factor weighs in favor of the Court's exercise of personal  
13 jurisdiction.

14 *ii. The Worley's burden of defending in California*

15 The Worleys contend that it would be extremely burdensome to  
16 litigate this matter in California. Mr. and Mrs. Worley reside in  
17 Florida. Moreover, since the filing of the instant motion, the  
18 Worleys have decided for financial reasons to represent themselves  
19 *pro persona*.<sup>5</sup> (Defs' Reply at 1.)

20 Although it may be difficult for the Worleys to defend in  
21 California, such a requirement is not unreasonable. The Worley's  
22 company EQ Stuff is subject to jurisdiction in California, thus the  
23 Worleys will likely be in California for the defense of EQ Stuff.  
24 Whether the litigation takes place in California or Florida has no  
25 bearing on the Worley's decision to represent themselves *pro*  
26 *persona* - that decision had to be made regardless of the forum

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27  
28 <sup>5</sup> The Court notes that EQ Stuff is represented by counsel in California.

1 state. Accordingly, the Court finds that the Worley's burden of  
2 defending in California is not unreasonable.

3 *iii. California's interest in resolving this dispute*

4 Because the plaintiff maintains its headquarters and principal  
5 place of business in California, California has a strong interest  
6 in providing an effective means of redress for its residents  
7 tortiously injured. Panavision, 141 F.3d at 1323. Thus, the Court  
8 finds that this factor weighs in DirectTV's favor.

9 *iv. Most efficient forum for resolution of dispute*

10 The most efficient resolution will be achieved by a court that  
11 is already "familiar with the facts and procedural history of the  
12 litigation." Ballard, 65 F.3d at 1502. This Court has already  
13 invested time and resources with this case, having issued both a  
14 Temporary Restraining Order and a Preliminary Injunction after  
15 extensive briefing on the merits. This Court also has five related  
16 cases pending before it. The Court, therefore, finds that the most  
17 efficient forum for resolution of the dispute is this forum.

18 *v. Conclusion*

19 The Court concludes that the Worleys failed to present a  
20 compelling case that this Court's exercise of jurisdiction in  
21 California would be unreasonable.

22  
23 *d. Conclusion*

24 Based on the foregoing analysis, the Court finds that the  
25 Worleys are subject to personal jurisdiction in this Court.<sup>6</sup>

26  
27 <sup>6</sup> Because the Court finds that the Worleys are subject to  
28 personal jurisdiction in this Court under the doctrine of specific  
jurisdiction, the Court does not address the issue of general  
(continued...)

1 II. Motion to Transfer Venue

2 A. Legal Standard

3 Title 28 U.S.C. § 1404(a) provides, "[f]or the convenience of  
4 parties and witnesses, in the interest of justice, a district court  
5 may transfer any civil action to any other district or division  
6 where it may have been brought." 28 U.S.C. § 1401(a).

7

8 B. Analysis<sup>7</sup>

9 Under § 1404(a), the district court has discretion "to  
10 adjudicate motions for transfer according to an individualized,  
11 case-by-case consideration of convenience and fairness." Jones v.  
12 GNC Franchising, 211 F.3d 495, 498 (9th Cir. 2000) (internal  
13 citation omitted). A motion to transfer venue under § 1404(a)  
14 requires the court to weigh multiple factors in its determination  
15 whether transfer is appropriate in a particular case. Id. For  
16 example, the court may consider: (1) the plaintiff's choice of  
17 forum, (2) the convenience of the witnesses and parties, (3) the  
18 familiarity of the forum with the applicable law, (4) the ease of  
19 access to evidence, (5) the parties' contacts with the chosen  
20 forum, and (6) the differences in the costs of litigation. See id.  
21 at 498-99; see also Decker Coal Co. v. Commonwealth Edison Co., 805  
22 F.2d 834, 843 (9th Cir. 1986).

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26 <sup>6</sup>(...continued)  
jurisdiction.

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28 <sup>7</sup> As a preliminary matter, the Court notes that EQ Stuff and  
the Worleys bring the motion to transfer venue. Taylor Patterson,  
GBR and OnTech do not join in the motion to transfer venue.

1           1.    Plaintiff's choice of forum

2           There is a strong presumption in favor of the plaintiff's  
3 choice of forum. Ravelo Monegro v. Rosa, 211 F.3d 509, 513 (9th  
4 Cir. 2000). Here, much of the operative events - the pirating of  
5 DIRECTV's signals - occurred in California. Moreover, the  
6 plaintiff's corporate headquarters are located within this  
7 district, in El Segundo, California. See, e.g., Gates Learjet  
8 Corp. v. Jensen, 743 F.2d 1325, 1335 (9th Cir. 1984) (holding that  
9 a showing of inconvenience by a plaintiff who has sued in his home  
10 forum will normally outweigh the inconvenience a defendant may  
11 show). The Court finds that this factor weighs against  
12 transferring the instant case to Florida.

13

14           2.    Convenience of the witnesses and parties

15           Many of the parties and witnesses reside in California. For  
16 example, DIRECTV, Taylor Patterson, GBR, OnTech, Paypal, and  
17 Cardservice International are all located in California. Although  
18 Florida may be more convenient for the Worleys and EQ Stuff, that  
19 is not the case for the other parties and witnesses. At best, the  
20 defendants' motion to transfer venue would serve to "merely shift  
21 rather than eliminate the inconvenience." Decker Coal Co., 805  
22 F.2d at 843. The Court finds that this factor weighs against  
23 transferring the instant case to Florida.

24

25           3.    Familiarity of the forum with the applicable law

26           The familiarity of the Court with the relevant issues of a  
27 case is one of the "practical problems that make trial of a case  
28 easy, expeditious and inexpensive." Id.; see also Jones, 211 F.3d

1 at 498 (recognizing that courts should consider the forum "that is  
2 most familiar with the governing law"). This Court has already  
3 invested time and resources with this case, having issued both a  
4 Temporary Restraining Order and a Preliminary Injunction after  
5 extensive briefing on the merits. In addition, this Court is  
6 already handling five cases related to the instant case. The Court  
7 finds that this factor weighs against transferring the instant case  
8 to Florida.

9

10 4. Ease of access to evidence

11 The plaintiff's current discovery efforts are focused not on  
12 Florida, but rather on obtaining information and documents from  
13 Taylor Patterson, GBR, OnTech, and other designers and developers,  
14 all of whom are California residents. On the other hand, EQ  
15 Stuff's records and inventory are in Florida. Most of the evidence  
16 is in the form of documents and small pieces of hardware. Thus, if  
17 necessary, any evidence in Florida can easily be transported to  
18 California. The Court finds that this factor weighs against  
19 transferring the instant case to Florida.

20

21 5. Parties' contacts with the chosen forum

22 The plaintiff and two of the defendants have business  
23 operations in California. The plaintiff's corporate headquarters  
24 are located in El Segundo, California, and the vast majority of  
25 DIRECTV employees are located in the Los Angeles area. Moreover,  
26 the Worleys and EQ Stuff marketed, sold, and shipped illegal pirate  
27 devices into the State of California and the Central District. The

28

1 Court finds that this factor weighs against transferring the  
2 instant case to Florida.

3

4           6.    Differences in the costs of litigation

5           The Worleys and EQ Stuff contend that the financial burden of  
6 litigating in California requires that this Court transfer the  
7 instant case to Florida. The Worleys further argue that the  
8 plaintiff has the ability to bear the expense of a transfer of  
9 venue, while the Worley's ability to litigate would be prejudiced  
10 if venue is not transferred. (Defs' Mtn. at 10.) However, viewing  
11 this case as a whole, the plaintiff and three of the defendants are  
12 from California. This is not a case, as the Worleys suggest, of a  
13 large corporation suing an individual in an unreasonable forum.  
14 (Id.) Here, half of the parties are located in California.  
15 Transferring the case to Florida would merely shift the costs of  
16 litigation from EQ Stuff and the Worleys to the California  
17 defendants. The Court finds that this factor weighs against  
18 transferring the instant case to Florida.

19

20           7.    Conclusion

21           The Court finds that on balance the factors weigh against  
22 transferring the instant case to Florida.

23

24 III. Motion to Dismiss The WireTap Act Claim

25           A.    Legal Standard

26           Under 18 U.S.C. § 2512, only a criminal action may be brought.  
27 The plaintiff claims a private right of action for the violation of  
28 § 2512 by virtue of 18 U.S.C. § 2520. Section 2520 provides, in

1 relevant part, that "any person whose wire, oral, or electronic  
2 communication is intercepted, disclosed, or intentionally used in  
3 violation of this chapter may in a civil action recover from the  
4 person or entity which engaged in that violation." 18 U.S.C.  
5 § 2520.

6

7 B. Analysis

8 The issue of whether § 2520 applies to § 2512 was discussed in  
9 Oceanic Cablevision, Inc. v. M.D. Electronics, 771 F. Supp. 1019  
10 (D. Neb. 1991). In that case, the plaintiff, Oceanic Cablevision,  
11 Inc. ("Oceanic") provided cable television programming to  
12 subscribers in the Honolulu, Hawaii area. Id. at 1022. Oceanic's  
13 customers were able to purchase differing levels of service. Id.  
14 Oceanic controlled the customer's access to the different levels of  
15 service by the use of a converter box, which unscrambled the signal  
16 sent out by Oceanic. Id. The defendant, M.D. Electronics ("M.D.  
17 Electronics"), sold equipment that allowed Oceanic's signals to be  
18 unscrambled without payment to Oceanic. Id.

19 On the defendant's motion to dismiss for failure to state a  
20 claim, the Oceanic court held that § 2520 "confers a private cause  
21 of action upon persons when the action is brought against parties  
22 that have violated the provision of § 2510-2521." Id. at 1027.  
23 The Oceanic court found that "[a] plaintiff may bring a civil  
24 action under § 2520 whether or not the defendant had been subject  
25 to criminal prosecution and conviction, it is the plaintiff's  
26 burden to establish that the requirements of this section are met."  
27 Id. The Oceanic court further established that "the sale of  
28 'cloned' satellite television descramblers are prohibited by

1 § 2512.” Id. at 1028 (citing United States v. McNutt, 908 F.2d 561  
2 (10th Cir. 1990)).

3 This Court finds the rationale of Oceanic persuasive.<sup>8</sup> Under  
4 the rationale of Oceanic, the Court cannot conclude that the  
5 plaintiff has failed to state a cause of action under § 2520 for an  
6 alleged violation of § 2512. Accordingly, the Court denies the  
7 defendants’ motion to dismiss the plaintiff’s fourth cause of  
8 action.

9  
10 **CONCLUSION**

11 Based on the foregoing analysis, the Court denies the  
12 defendants’ motion to dismiss.

13  
14 IT IS SO ORDERED.

15  
16  
17 Dated: \_\_\_\_\_

\_\_\_\_\_  
18 DEAN D. PREGERSON  
19 United States District Judge  
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23  
24 <sup>8</sup>The defendants rely on Flowers v. Tandy Corp., 773 F.2d 585  
25 (4th Cir. 1985) and Ages Group, L.P. v. Raytheon Aircraft Co., 22  
26 F. Supp. 2d. 1310 (M.D. Ala. 1998). The Court, however, is not  
27 persuaded by these cases. See, e.g., Flowers, 773 F.2d 585  
28 (appeal of a directed verdict, in which the 4th Circuit found that  
§ 2520 did not allow a private cause of action for § 2512  
violations); Ages Group, L.P., 22 F. Supp. 2d. 1310 (summary  
judgment motion, in which the court followed the holding in  
Flowers). Instead the Court finds the procedural posture and the  
facts of Oceanic analogous to the instant case.